

The Zoning Ordinance for the Town of Fountain Hills

Chapter 1

INTRODUCTION

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Section 1.01 Declaration.

The Zoning Ordinance for the Incorporated Area of the Town of Fountain Hills, Arizona, serves, among other things, to divide the area of said town into Zoning Districts appropriate for various classes of residential, business, recreational, and industrial uses; provide for adequate light, air, and adequate parking facilities; to provide for expediting traffic within the Zoning Districts; to establish the building setback lines, the percentage of a lot or parcel which may be covered by buildings, and the size of yards and other open spaces.

Section 1.02 Purpose.

This Zoning Ordinance is designed to promote the public health, peace, safety, comfort, convenience and general welfare of the citizens of the Town of Fountain Hills; to guide, control and regulate the future growth and development in order to promote orderly and appropriate use of land in the entire area of said town; to protect the character and the stability of residential, business, recreational, and industrial areas of the Town of Fountain Hills; to provide adequate light, and air; to facilitate existing or potential traffic movements and parking facilities; to secure safety from fire and other dangers; and to prevent overcrowding of land and undue congestion of population. In preparation of this Ordinance consideration has been given to **Section 9-462.01 "Zoning regulations"** of the Arizona Revised Statutes.

Section 1.03 Short Title.

This Ordinance may be cited as "The Zoning Ordinance for the Town of Fountain Hills".

Section 1.04 Interpretation and Application.

In its interpretation and application of this ordinance, the provisions of this ordinance shall be held to be minimum requirements for the promotion of the general plan, and for the promotion of the public health, safety, and general welfare. It is not intended by this ordinance to repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this ordinance, or with restrictions placed upon property by covenant, deed, easement, or other agreement between parties, provided that where this ordinance imposes a greater restriction on land, buildings or structures than is imposed or required by such existing provisions of law, ordinance, contract, or deed, the provisions of this ordinance shall prevail. This ordinance replaces any other zoning ordinance previously adopted by the Town of Fountain Hills, Arizona.

Section 1.05 Council To Establish Fees.

The Common Council of the Town of Fountain Hills may from time to time establish and set by resolution the amount of charges for all planning and zoning applications within the jurisdiction of the Town of Fountain Hills.

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Section 1.06 Planning and Zoning Commission.

- A. Establishment; Composition; Terms of Members; Vacancies; Compensation of Members.** There is hereby established a Planning and Zoning Commission of the Town of Fountain Hills to consist of seven (7) members, all residents of the Town, to be appointed by the Town Council. The members of the Commission shall serve for terms of two (2) years. In the event of a death, resignation, or removal from the Commission, the vacancy shall be filled by the Council for the unexpired term. Members of the Commission shall serve at the pleasure of the Council. Three (3) unexcused absences during a term from any regular or special meetings shall be grounds for termination at the will and pleasure of the Town Council. If the Council desires, members of the Commission may be paid in the amount established by the Town Council, and may be reimbursed for actual expenses incurred in connection with their duties upon authorization in advance by the Commission and approval of such expenditures by the Town Manager.
- B. Powers and Duties.** It shall be the duty of the Commission:
1. To formulate and administer any lawful plan duly adopted by the Council for growth and development.
 2. To make or cause to be made a continuous study of the best and future use to which land and buildings shall be put within the Town of Fountain Hills.
 3. To recommend to the Council revisions in such plans which, in the opinion of the Commission, are in the best interest of the citizens of the Town of Fountain Hills.
 4. To hold public hearings when necessary or when required by law.
 5. To make recommendations to the Council on all matters concerning or relating to the creation of Zoning Ordinances, the boundaries thereof, the appropriate regulations to be enforced therein, and amendments of this ordinance.
 6. To carry out the specific duties as prescribed by this ordinance.
 7. To undertake all activities usually associated therewith and commonly known as "planning and zoning."
 8. To confer and advise with other town, county, regional, or state planning agencies and Commissions.
- C. Selection of Officers.** The Commission shall elect a chairman and vice-chairman from among its own members, who shall serve for one (1) year and until their successors are elected and qualified. The chairman shall preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization. The vice-chairman shall perform the duties of the chairman in the latter's absence or disability. Vacancies created by any cause shall be filled for the unexpired term by a new election.
- D. Quorum; Voting.** Four (4) members shall constitute a quorum. The affirmative vote of at least the majority of the quorum present and voting shall be required for passage of any matter before the Commission. A member may abstain from voting only upon a declaration that he has a conflict of interest, in which case such member shall take no part in the deliberation on the matter in question.

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- E. Rules; Regulations; Records; Meetings.** The Commission shall make and publish rules and regulations to govern its proceedings and to provide for its meetings. All meetings of the Commission shall be open to the public in accordance to the Sections 38-431 to 38-431.09, A.R.S., as amended. The minutes and records of all Commission proceedings shall be kept and filed as public record in the office of the town clerk.

Section 1.07 Board of Adjustment.

- A. Establishment.** The Town of Fountain Hills shall have a Board of Adjustment appointed by the Town Council.
- B. Composition.** The Board of Adjustment of the Town of Fountain Hills shall be composed of a total of five (5) members who shall be residents of the Town of Fountain Hills. The members of the Board shall be appointed by the Mayor, subject to the approval by the Town Council of the Town of Fountain Hills. These appointments shall be for a period of two (2) years each, with the terms of members so staggered that the terms of no more than three (3) members shall expire in any one year. Any vacancy shall be filled for the unexpired term. The term of all members shall extend until their successors are qualified. Members of the Board of Adjustment shall serve at the pleasure of the Council.
- C. Compensation.** All members of the Board of Adjustment shall serve without pay. However, members of said Board may be reimbursed for actual expenses incurred in connection with their duties upon authorization or ratification by the Board and approval of such expenditures by the Town Manager.
- D. Officers.** The Board shall elect a Chairman and Vice-Chairman from among its own members, who shall serve for (1) year and until their successors are elected and qualified. The Chairman shall preside at all meetings and exercise all the usual rights, duties, and prerogatives of the head of any similar organization. The Vice-Chairman shall perform the duties of the Chairman in the latter's absence or disability. Vacancies created by any cause shall be filled for the unexpired term by a new election.
- E. Powers and Duties.**
1. It shall be the duty of the Board of Adjustment to:
 - a. Hear and decide appeals in which it is alleged there is an error in any order, requirement or decision made by the Zoning Administrator in the enforcement of the zoning ordinance, and to reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the Zoning Administrator appealed from, and make such order, requirement, decision or determination as necessary.
 - b. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized

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shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the same zoning district in which such property is located.

2. The Board of Adjustment may not:
 - a. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance, provided the restrictions in this paragraph shall not affect the authority to grant variances pursuant to this article.
 - b. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

Section 1.08 Zoning Administrator.

- A. Appointment.** The Community Development Director shall be the Zoning Administrator of the Town of Fountain Hills. The Community Development Director may delegate some or all of the duties of the Zoning Administrator.
- B. Powers and Duties.** The Zoning Administrator shall:
 1. Enforce the zoning ordinance.
 2. Accomplish all administrative actions required by the ordinance.
 3. Undertake preliminary negotiation with, and provide advice to, all applicants for zoning adjustment action, use permits, plan review or other action of the Zoning Administrator, the Planning and Zoning Commission, or the Board of Adjustment.
 4. Subject to general and specific policy laid down by the Planning and Zoning Commission and Town Council, interpret the zoning ordinance to members of the public, departments, and other branches of government.

Section 1.09 Enforcement.

This ordinance shall be enforced by the Zoning Administrator who shall in no case grant permission for the issuance of any permit for the construction, reconstruction, alteration, demolition, movement or use of any building, structure, lot, or parcel if the zoning administrator determines that the building, structure, lot or parcel as proposed to be constructed, reconstructed, altered, used, or moved, would be in violation of any of the provisions of this ordinance, unless directed to issue such permit by the Board of Adjustment after interpretation of the ordinance or the granting of variance, or when appropriate, by the Town Council after interpretation of this ordinance.

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Section 1.10 Violation and Penalty.

It is hereby declared to be unlawful to construct, erect, install, alter, change, demolish, maintain, or use any house, building, structure, or fence, or to use any lot or parcel contrary to, or in violation of, any provision of this ordinance. Any person, firm, or corporation, found to be violating any of the provisions of this zoning ordinance and any amendments thereto, shall be guilty of a misdemeanor and is subject to punishment provided in Article 1-8 of the Town Code.

Section 1.11 Severability.

If any part of the zoning ordinance of the Town of Fountain Hills is found to be invalid or unconstitutional by any court, such action shall not apply to the ordinance as a whole, but only to that specific part, and it is intended and declared that all parts of said zoning ordinance of the Town of Fountain Hills not expressly declared to be invalid or unconstitutional shall continue in full force and effect notwithstanding so much thereof as may be declared to be invalid or unconstitutional.

Section 1.12 Definitions.

For the purpose of this ordinance, certain words and terms used herein are defined as follows: All words used in the present tense include the future tense; all words in the plural number include the singular number, all words in the singular number include the plural number, unless the natural construction of the wording indicates otherwise. Gender shall be universal, any reference to one gender shall also implicitly refer to the other gender. The word "shall" is mandatory and not discretionary. Other words and phrases used in the ordinance shall have the following meanings:

Abutting: The condition of two (2) adjoining properties having a common property line or boundary, including cases where two (2) or more lots adjoin only a corner or corners.

Access or Access Way: The place, means, or way by which pedestrians and vehicles shall have safe, adequate and usable ingress and egress to a property or use as required by this ordinance.

Acre: An area of land containing forty-three thousand five hundred sixty (43,560) square feet.

Adjacent: Nearby, not distant or having a common endpoint or border.

Adjoining: Touching or bounding at a point or line.

Adult Oriented Facilities: Which shall include the following:

A. Adult Bookstore.

1. Having as a substantial portion of its stock in trade, videos, film, books, magazines and other periodicals depicting, describing, or relating to "specified sexual activities" or which are characterized by their emphasis on matter depicting, describing or relating to "specified anatomical areas", or
2. Having as a substantial portion of its stock in trade, books, magazines and other periodicals, and which excludes all minors from the premises or a section thereof.

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- B. Adult Live Entertainment Establishment:** An establishment which features topless female or bottomless dancers, go-go dancers, exotic dancers, strippers or similar entertainers.
- C. Adult Theater:** An enclosed building or open-air drive-in theater:
1. Regularly used for presenting any film or plate negative, film or plate positive, film or tape designed to be projected on a screen for exhibition or films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen depicting, describing or relating to "specified sexual activities" or characterized by an emphasis on matter depicting, describing or relating to "specified anatomical areas"; or
 2. Used for presenting any film or plate negative, film, or plate positive, film or tape designed to be projected on a screen for exhibition, or films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen and which regularly excludes minors.
- D. Specified Sexual Activities:**
1. Human genitals in a state of sexual stimulation or arousal.
 2. Acts of human masturbation, sexual intercourse, or sodomy.
 3. Fondling or other erotic touching of human genitals, pubic region, buttocks, or breasts.
- E. Specified Anatomical Areas:**
1. Less than completely and opaquely covered: (a) human genitals, pubic region; (b) buttock; and, (c) breast below a point immediately above the top of the areola; and,
 2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Agriculture: The tilling of the soil, raising of crops, horticulture, viticulture, sulviculture, including all uses customarily incidental thereto but not including slaughterhouses, fertilizer yards, or plants for the reduction of animal matter, or any other industrial use which is similarly objectionable because of noise, odor, smoke, dust or fumes.

Airport: Any area which is used or is intended to be used primarily for the taking off and landing of aircraft, and any appurtenant areas which are used or intended to be used for airport buildings or facilities including open spaces, taxiways and tie-down areas, hangars, transition and clear zones, and other accessory buildings.

Alley: A right-of-way, dedicated to public use, affording a secondary means of access to abutting property and not intended for general traffic circulation.

Ambulatory Person: Any individual including one who uses a cane or other ambulatory support, who is physically and mentally capable, under emergency conditions, of finding a way to safety without assistance.

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Amendment: In reference to this ordinance, a change in the wording or substance of this ordinance, or an addition or deletion or a change in the zone district boundaries or classifications of the zoning map.

Animal Hospital: Facilities for the care, treatment, and boarding of animals including facilities within the term "veterinary clinic."

Antique: A product that is old or exchanged because of value derived, because of oldness as respects the present age, and not simply because same is not a new product.

Appeal: An action which permits anyone to arrange for a hearing before an individual or a group other than the individual or group from whose decision the appellant seeks redress, or a first request for action, depending on context; Chapter 2 addresses the appeal procedures available to aggrieved parties.

Area of Jurisdiction: The Town of Fountain Hills as it exists now and as it is lawfully changed; plus any area allowed by Arizona Revised Statute outside of the corporate limits which permits review by the Town of Fountain Hills.

Automotive Junk: Any vehicle missing one or more body parts; or is incapable of operating under its own power; or is missing any wheels; or has missing or severely shattered glass which prohibits safe operation; or has one or more flat tires for a period of seventy-two (72) or more hours.

Automobile Repair: All aspects of the repair of motor vehicles including, but not limited to, lubrication, tune-up and preventive maintenance.

Automobile Sales: An agency selling motor vehicles and providing services commonly associated with motor vehicle sales.

Bar or Cocktail Lounge: An establishment whose primary business is the serving of alcoholic beverages to the public for consumption on the premises.

Basketball Court: A basketball court as defined by the National Federation State High School Association regulations.

Bed and Breakfast Establishment: A dwelling in which the occupants of the dwelling provide, for compensation, the short term lodging and meals for guests, occupying not more than two (2) guest rooms, located within the same dwelling.

Board of Adjustment: (See Section 1.07).

Building: Any structure used for the support, shelter, housing or enclosure of persons, animals, chattels or property of any kind, with the exception of dog houses, playhouses and similar structures.

Building, Accessory: A building or structure that does not share a livable, enclosed connection to the main building, and that is subordinate to, and the use of which is customarily incidental to, that of the main building, structure, or use on the same lot or parcel.

Building Area: The total areas, taken on a horizontal plane at the mean grade level, of the principal buildings and all accessory buildings, exclusive of uncovered porches, terraces and steps.

Building, Attached: A building which has at least part of a wall in common with another building, or which is connected to another building by a roof.

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Building, Detached: A building which is separated from another building or buildings on the same lot.

Building, Footprint: The area of the primary structure measured from the outside walls (excluding any overhanging portions) which includes indoor uses such as attached garage, carports, utility room, laundry, etc. (including covered patios and breezeways which are an integral part of the roof structure of the structure.

Building, Height Of: The vertical distance measured at any point from the natural, pre-existing grade level or proposed grade, whichever is lower, to the highest point of the structure. If the structure is located in a platted subdivision where grading was done as a part of the subdivision's improvements, the building height shall be the vertical distance measured at any point from the finished grade as shown on the subdivision grading plans or the natural, pre-subdivision grade, whichever is lower, to the highest point of the structure. If the structure has a basement, where the basement floor pad grade is lower than the preexisting grade and where all exterior walls to the basement are completely back-filled to the pre-existing grade and no ingress or egress is proposed directly from the basement to the exterior of the building, building height shall be measured at any point along the pre-existing grade to the highest point of the structure above that point. If the structure is proposed as a walk-out, where the walk-out or lower floor pad grade is lower than the preexisting grade and where ingress and egress is proposed on only one side of the walk-out floor and the where the other non-walk-out sides of the walk-out floor are completely back-filled to the pre-existing grade and no ingress or egress is proposed directly from the non-walk-out sides of the walk-out floor to the exterior of the building, building height above the walk-out level shall be measured at any point along the pre-existing grade to the highest point of the structure above that point. In the event that terrain problems prevent an accurate determination of height, the Zoning Administrator shall rule as to height and appeal from that decision shall be to the Board of Adjustment

Building, Principal: A building, or buildings, in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the main building of the lot on which the same is situated.

Building Permit: A permit required for erection, construction, modification, addition to or moving of any building, structure or use in the incorporated area of the Town of Fountain Hills as more fully defined in Section 417 of the Uniform Building Code adopted by the Town Council.

Building Setback: The minimum distance as prescribed by this ordinance between any property line and the closest point of the foundation or any supporting post or pillar of any building or structure related thereto. (See: Yard, front, side and rear).

Campground: Any lot, parcel, or tract of land used, designed, maintained, and intended for rent of plots or sites to accommodate temporary camping by the traveling public with or without sanitary facilities and water, whether or not a charge is made for the use of the park and its facilities.

Carport: A roof supported by pillars or cantilevers, which shelters a car or other vehicle. May either extend from a structure (usually a house) or be constructed separately (often to accommodate several cars).

Cemetery: Land used or intended to be used for the burial of the dead, and dedicated for such purposes, including columbaria, crematoriums, mausoleums and mortuaries when operated in conjunction with and within the boundaries of such premises.

Church: A permanently located building commonly used for religious worship fully enclosed with walls, but including windows and doors, and having a structurally solid and sound roof.

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Clearing: The removal and disposal of all obstructions such as fences, walls, foundations, buildings and existing structures, and accumulations of rubbish of whatever nature. Also the substantial removal of trees, Also the substantial removal of trees, shrubs, cacti, and other indigenous vegetation, but not including grass and weeds considered to be a potential fire hazard.

Clinic: A place for the provision of group medical services, not involving overnight housing of patients.

Clubhouse: A building, located on a golf course with nine (9) or more holes, that contains one or more of the following facilities: pro shop for the retailing of clothing and golf accessories; the golf course's own cart rental and maintenance facility (does not include the golf cart sales and the maintenance of golf carts not owned by the golf course); restaurant with or without alcoholic beverage service; and the golf course's administrative office.

Cluster Housing: Houses built close together with little yard space and a large common area, rather than each house having a large separate yard.

Commission: The Town of Fountain Hills Planning and Zoning Commission. (See Section 1.06).

Common Open Space: Open space usable by all the people within a certain development and such area is owned by all the property owners in that development.

Community Corrections Facility: A facility which provides lodging and meals and, primarily, counseling, treatment, and rehabilitation to adjudicated delinquents, parolees, and individuals in pre-release (transitional) or diversionary programs from correction institutions.

Community Development Director: The person appointed by the Town Manager to be the Community Development Director. If there is no such person designated by the Town Manager, the Town Manager is the Community Development Director.

Condominium: Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Contiguous: In actual contact.

Convalescent Home: (Same as nursing home).

Corral: A pen or enclosure for confining animals.

Council: Town Council of the Town of Fountain Hills, Arizona.

County: Maricopa County, Arizona.

Day Care Center: A residential facility in which care for non-residents is provided for periods of less than twenty-four hours per day, for more than five (5) people.

Density: The average number of families, persons or housing units per unit of land; usually density is expressed "per acre." Thus, the density of a development of 300 units occupying 40 acres is 7.5 units per acre. The control of density is one of the basic purposes of zoning.

Disturbance: Clearing, grubbing, excavation and/or filling.

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Drive-in Restaurant: Any establishment where food or beverages are dispensed and may be consumed on the premises, but outside a closed building.

Drive-in Theater: An open air theater where the performance is viewed by all, or part, of the audience from motor vehicles.

Dwelling: A building or portion thereof, built in accordance to the building code adopted in the Town or, if built prior to incorporation, adopted by Maricopa County, designed exclusively for residential purposes, including single-family and multiple-family dwellings; but not including hotels, motels, boarding and lodging houses, fraternity and sorority houses, rest homes and nursing homes, or child care nurseries.

Dwelling, Multiple-Family: A building, built in accordance to the building code adopted in the Town or, if built prior to incorporation, adopted by Maricopa County, designed exclusively for occupancy by or occupied by two (2) or more families living independently of each other. Such building(s) shall have a connection which is comprised of a full ground to roof wall and a roof structure of not less than eight (8) feet in depth.

Dwelling, Single-Family: A detached building, built in accordance to the building code adopted in the Town or, if built prior to incorporation, adopted by Maricopa County, designed exclusively for occupancy by or occupied by one (1) family for residential purposes.

Dwelling, Two-Family: A building, built in accordance to the building code adopted in the Town or, if built prior to incorporation, adopted by Maricopa County, designed exclusively for occupancy by or occupied by two (2) families living independently of each other. Such building(s) shall have a connection which is comprised of a full ground to roof wall and a roof structure of not less than eight (8) feet in depth.

Dwelling Unit: A building or portion thereof having restricted access to one kitchen or area convertible to kitchen activities, built in accordance to the building code adopted in the Town, or if built prior to incorporation, adopted by Maricopa County, designed exclusively for residential purposes, including single-family and multi-family dwellings; but not including hotels, motels, boarding and lodging houses, fraternity and sorority houses, rest homes and nursing homes, or child care nurseries.

Easement: A specified area on a lot or parcel of land reserved or used for the location of and/or access to, utilities, drainage or other physical access purposes, or for preservation of undisturbed terrain for the benefit of the general public.

Elderly: A person who is sixty-five (65) years of age or older.

Erect: The word "erect" includes build, build upon, add to, alter, construct, reconstruct, move upon, or any physical operations on the land, required for a building.

Excavation: The removal of earthen material, resulting in a lowering of the grade at the location.

Family: An individual, or two (2) or more persons related by blood or marriage, or a group of persons not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

Farm: An area of not less than two (2) contiguous acres which is used for the commercial production of farm crops such as vegetables, fruit trees, cotton, grain and other crops, and their storage on the area, as well as the raising thereon of farm poultry and farm animals, such as horses, cattle, and sheep for commercial purposes. The term "farm" includes the operating of such an area for one (1) or more of the above uses, including dairy

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farms, with the necessary accessory uses for treating or storing the produce, provided that the operation of any such accessory use is secondary to that of the farm activities, and provided further that the farm activities do not include commercial feeding or offal to swine or other animals.

Fence: Any device built to enclose a parcel of land, to separate two (2) parcels of land, or to separate a parcel of land into different use areas.

Filling: The dumping or depositing of earthen material resulting in the raising of the grade at that location.

Floor Area: The gross square footage of a building. When considering minimum off-street parking area, floor area may also include the open land needed for service to the public as customers, patrons, clients, or patients, including area occupied by fixtures and equipment used for display or sale of merchandise.

Garage, Private: A building or portion thereof, used for the shelter or storage of self-propelled vehicles, or owned or operated by the occupants of a main building where there is no service or storage for compensation.

Garage, Public: Any building, except one herein defined as a "private garage" used for the storage of self-propelled vehicles or where any such vehicles are equipped for operation or kept for hire.

Grade: The elevation of the land.

Grade, Finished: Final elevation of the ground surface conforming to the approved grading plans.

Grade, Natural: Elevation of the natural or undisturbed ground surface prior to any grading operation. If "natural grade" can no longer be determined, then the grade elevation existing on September 20, 1991, as shown on the Town's topographical maps of that date, shall be used in lieu thereof. If a parcel of land is not shown on the September 20, 1991 topographical maps, "natural grade" shall be as shown on a topographical map that has been both prepared after September 20, 1991 and that is acceptable to the Town Engineer.

Grading: The process of changing gradients of land by contouring, smoothing or otherwise shaping land areas, by excavating, filling, or combination thereof.

Group Home for the Handicapped and Adult Care: A dwelling shared by handicapped and/or elderly people as their primary residence and their resident staff, who live together as a single housekeeping unit, sharing responsibilities, meals, and recreation. The staff provides care for the residents. A Group Home for the Handicapped and Adult Care does not include nursing homes, alcohol or other drug treatment centers, community correction facilities, shelter care facilities, or homes for the developmentally disabled as regulated by the Arizona Revised Statutes Section 36-582.

Grubbing: The elimination of roots from the ground by digging or pulling.

Guest: Any transient person who rents or occupies a room or structure for sleeping purposes.

Guest House: Living or sleeping quarters within an accessory building for the sole use of occupants of the premises, guests of such occupants or persons employed on the premises. The accessory building may be attached to or detached from the main building. Such quarters shall not be rented, and/or otherwise used for income producing purposes.

Guest Ranch: A building or group of buildings containing two (2) or more guest rooms, other than a boarding house, hotel, or motel, and including outdoor recreational facilities such as, but not limited to, horseback riding, swimming, tennis courts, shuffleboard courts, barbecue and picnic facilities, and dining

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facilities intended for the use primarily by guests of the guest ranch, but not including bars and restaurants which cater primarily to other than guests of the guest ranch.

Guest Room: A room designed for occupancy by one (1) or more guests for sleeping purposes, but having no cooking facilities and not including dormitories.

Handicapped: A person who: (a) has a physical or mental impairment which substantially limits one or more of such person's major life's activities so that such person is incapable of living independently; (b) has a record of having such an impairment; or (c) is regarded as having such an impairment. However, "handicapped" does not include current, illegal use of or addiction to a controlled substance as defined in the Controlled Substance Act (21 United States Code 802).

Hazardous Materials: Any substance characterized as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hypergolic materials and pyrophoric materials and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

Home Day Care Center: A residential facility in which care for non-residents is provided for periods of less than twenty-four hours per day, for five or less people.

Home Occupation: Any occupation or profession which is incidental and subordinate to the use of the dwelling unit for dwelling purposes and which does not change the character thereof, and in connection with which there are no employees other than members of the immediate family residing in the dwelling unit. A home occupation may not generate traffic as a result of patronage and/or shipping and receiving of materials beyond five (5) trips a day. Shipping and receiving shall only be by a vehicle customarily used for residential purposes.

Hospital: A place for the treatment or care of human ailments, where overnight lodging for patients is provided, other than nursing homes.

Hotel: A building or group of buildings, other than a motel, boarding house or lodging house, containing individual guest rooms, suites of guest rooms, and dwelling units, and which furnishes services customarily provided by hotels.

Individual: Any private individual, tenant, lessee, owner or any commercial entity including, but not limited to, companies, partnerships, joint ventures or corporations.

Junk: Any old or scrap metal, rope, rags, batteries, paper, trash, wood, glass, plastic and/or rubber debris, waste, or junked dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Junkyard: Any land or building used for the abandonment, storage, keeping, collecting, or baling of paper, rags, scrap metals, other scrap or discarded materials, or for the abandonment, demolition, dismantling, storage, or salvaging of automobiles or other vehicles not in running condition, or machinery, or parts thereof.

Kennel: Any premises where more than four (4) dogs or cats are bred, boarded, and/or trained. Having one litter up to six (6) weeks of age is not considered to be a kennel.

Kitchen: Any room in a building or dwelling unit which is used or intended to be used for cooking or the preparation of food.

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Landscaping: An area which has been improved through the harmonious combination and introduction of trees, shrubs, and ground cover, and which may contain natural topping material such as boulders, rock, stone, granite or other approved material. The area shall be void of any asphaltic or concrete pavement except for pedestrian walkways.

- A.** "Fully-abutting" areas are those landscaped or revegetated areas, such as a disturbed area that is proposed to look as if no disturbance activity has occurred, where natural undisturbed areas abut one or both sides of a revegetated area.
- B.** "Partially-abutting" areas are those landscaped or revegetated areas, such as a disturbed area that is proposed to look as if no disturbance activity has occurred, where natural undisturbed areas abut one side of a revegetated area.
- C.** "Non-abutting" areas are those landscaped or revegetated areas that are not intended to fully resemble the preexisting natural undisturbed landscaping of the site.

Laundry, Self Service: A building within which clothes washing and drying machines, and clothes dry-cleaning machines, either coin operated or attendant operated, are provided on a rental basis for use by individuals for doing their own laundry or dry cleaning. Self-service laundry does not include outdoor drying facilities.

Loading and Unloading Spaces: A permanently maintained space on the same lot as the principal building accessible to a street or alley and not less than ten (10) feet in width, twenty (20) feet in length, and fourteen (14) feet in height.

Lot: A single piece of property located in a recorded subdivision, having frontage on publicly dedicated and accepted street or an approved private road, which is described and denoted as such.

Lot Area: The total horizontal area within the lot lines of a lot.

Lot, Corner: A lot which has an interior angle of one hundred thirty-five (135) degrees or less at the intersection of two (2) street lines. A lot abutting upon a curved street is considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of one hundred thirty-five (135) degrees or less.

Lot Coverage: That portion of a lot or building site which is occupied by any building or other covered structure, excepting paved areas, walks and swimming pools.

Lot Depth: The horizontal length of a straight line connecting the midpoints of the front and rear lot lines.

Lot Frontage: The horizontal length of the front lot line.

Lot, Interior: A lot other than a corner lot.

Lot, Key: A lot adjacent to a corner lot having its side lot line in common the rear lot line of the corner lot and fronting on the street which forms the side boundary of the corner lot.

Lot Line: The line bounding a lot.

Lot Line, Front: In the case of an interior lot, a line separating the lot from the street right-of-way. In the case of a corner lot, the narrower of the two lot lines adjoining a street right-of-way.

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Lot Line, Rear: A lot line which is opposite and most distant from the front lot line. In the case of a lot having five (5) or more sides, the rear lot line shall be any lot line, other than the front lot line, which intersects a side or a street side lot line at any angle less than one hundred thirty-five (135) degrees.

Lot Line, Side: Those lot lines other than a street side lot line that connects the front and rear lot lines.

Lot Line, Street Side: That lot line or lines on a corner lot adjoining a street right-of-way that connects the front lot line to a rear lot line.

Lot, Through: A lot which has street right-of-way frontage on two non-adjoining sides.

Lot Width: For rectangular lots, lots having side lot lines not parallel, and lots on the outside of the curve of a street, the distance between side lot lines measured at the required minimum front yard line on a line parallel to the street or street chord; and for lots on the inside of the curve of a street, the distance between side lot lines measured thirty (30) feet behind the required minimum front yard line on a line parallel to the street or street chord.

Manufacturing: The fabricating or assembling of materials into finished or partially finished products by hand or by the use of machinery.

Massage Establishment: Any establishment having its place of business where any person, firm, association or corporation engages in or carries on or permits to be engaged in or carried on any massage activities defined as any method of pressure on, friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance.

Master-Planned Village Sales and Information Center. A facility that meets the adopted version of the Uniform Building Code of the Town of Fountain Hills, that is used as an information/sales facility by the developer of a master-planned village.

Master-Planned Village. A development containing over 200 contiguous acres contained in a master subdivision plat by a single developer.

Mobile Home: A structure transportable in one or more sections, including the plumbing, heating, air conditioning and electrical systems contained in such structure which meets the standards specified in the National Manufactured Housing and Safety Standards Act of 1976, as amended, which erected on site meets all of the following criteria: (a) eight (8) body feet or more in width; (b) Thirty-two (32) body feet or more in length; (c) built on a permanent chassis; and (d) designated to be used as a portable home with or without a permanent foundation, and shall be classified as a mobile home whether or not its wheels, rollers, skids or other rolling equipment have been removed. For purposes of these regulations, mobile homes are a special form of single-family detached dwellings and are subject to such special regulations as are set forth herein and shall not be considered a modular or factory built building as defined in this section.

Mobile Home Park: Any lot, parcel or tract of land, designed, maintained, used and intended for rent or lease of individual lots or sites to accommodate one or more mobile homes, including all buildings, structures, vehicles, accessory buildings, and appurtenances to be used or intended as equipment as a trailer court park, whether or not a charge is made for the use of the site or the use of its facilities. A mobile home park does not include lots upon which unoccupied mobile homes or unoccupied travel or commercial trailers are parked for display, inspection, and sale.

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Mobile Structure: A movable or portable structure thirty-two (32) feet or more in length and eight (8) feet or more in width, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for occupancy classification as an office, retail store, airport hangar, classroom, or any other occupancy classification. It may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two (2) or more units separately towable which can be joined to form a single unit. The removal of the wheels and running gear shall not change the meaning of this term.

Mobile Home Subdivision: A subdivision designed for residential use where the residences are mobile homes and structures conforming to the adopted building codes of the Town.

Modular or Factory Built Buildings: A building complying with the adopted building codes of the Town which is manufactured, constructed, or fabricated off-site and capable of being towed to a permanent site to be installed on a permanent foundation. Does not include a mobile home. Such a structure must be certified by the Office of Manufactured Housing of the State of Arizona.

Motel: A building or group of buildings containing guest rooms or apartments each of which maintains a separate entrance, used primarily for the accommodation of motorists, and providing automobile parking space on the premises.

Native Vegetation: Indigenous plant materials of the Sonoran Desert.

Natural: The condition of the land, vegetation, rocks, and other surface features which have not been physically disturbed, changed or added to by any action of man or machine.

Nonconforming Structure: A structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance, does not conform with the standards of coverage, yard spaces, height of structures or distance between structures prescribed in the regulations for the district in which the structure is located.

Nonconforming Use: The use of a structure or land which was lawfully established and maintained prior to the adoption of this ordinance but which, under this ordinance, does not conform to the use regulations for the district in which it is located.

Nuisance: Any thing, condition or use of property which endangers life or health, gives offense to the senses, and/or obstructs the reasonable and comfortable use of other property.

Nursing Home: A structure operated as a lodging house in which nursing, dietary and other personal services are rendered to convalescents, not including persons suffering from contagious diseases, and in which surgery is not performed and primary treatment, such as customarily is given in hospitals and sanitariums, is not provided. A convalescent home shall be deemed a nursing home.

Nursery: A commercial operation for the growth and sale of plants, storage of equipment for landscaping and the wholesale or retail sale of commercial gardening supplies.

Office: A room or rooms and accessory facilities for the managing or conducting of a business.

Off-Street Parking and Loading Facilities: A site or a portion of a site devoted to the off-street parking of motor vehicles including parking spaces, aisles, and access driveways.

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Open Space: Any parcel or area of land or water unimproved or improved and set aside, dedicated, designated, or reserved for the public or private use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

Park: A public or private parcel of land developed and used for passive or active recreation.

Parking Area: An area designed and constructed and used exclusively for the parking, storage and maneuvering of vehicles.

Parking Space: A permanently surfaced area, enclosed or unenclosed, of not less than nine (9) feet in width, and nineteen (19) feet in depth, together with a driveway connecting the parking space with a street and permitting ingress and egress of the automobile, (See Chapter 7).

Planned Unit Development: A development of five (5) or more acres in size, in which flexibility can be permitted in lot size, lot width, lot coverage, and setbacks, in order to encourage more creative and imaginary design, thereby preserving natural features, protecting environmentally-sensitive areas and/or providing usable open spaces within the development.

Planning and Zoning Commission: The Town of Fountain Hills Planning and Zoning Commission.

Professional Office: Any building, structure, or portion thereof, used or intended to be used as an office for a lawyer, architect, engineer, surveyor, planner, optometrist, accountant, doctor, dentist, or other similar professions.

Public Building: Facilities for conducting public business occupied by various public agencies. This includes all federal, state, county, and town offices and buildings.

Public Hearing: A hearing held to receive public testimony as required by law.

Public Meeting: A meeting held in conformance to the Arizona Open Meeting Law as contained in A.R.S. 38-431 et. seq.

Public Utility: Private or public facilities for distribution of various services, such as water, power, gas, communication, etc., to the public.

Recreation Facilities: Includes buildings, structures or areas built or developed for purposes of entertaining, exercising or observing various activities participated in either actively or passively by individuals or organized groups.

Recreational Vehicle: A vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. This includes motor homes, self-contained travel trailers, and campers.

Recreational Vehicle Park: Facilities for the temporary storage, parking and maneuvering of recreational vehicles (motor homes, travel trailers, campers, etc.) with adequate roads and stall sites, including sanitary and water facilities. Site locations are provided on a day-to-day basis. Does not constitute a mobile home park and may not allow mobile homes.

Restaurant: An establishment whose primary business is the serving of food to the public.

Retail Store: A commercial business for selling goods, services, wares or merchandise directly to the customer, but not including a professional office.

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Retaining Wall: A wall or terraced combination of walls used to retain earth, but not directly supporting the wall of a building, including stacked rock and imbedded boulder walls.

Revegetation: The replacement of indigenous living plant materials on areas where the natural vegetation has been removed. The areas include disturbed natural areas and man-made cut and fill slopes.

Riprap Material: Material that is a loosely composed layer of rocks and stones used to hinder the flow of water, thereby preventing erosion.

Right-of-Way (ROW): Includes any public or private right-of-way and includes any area required for public use pursuant to any official plan.

Satellite Dish Antenna: A device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based stations. This definition is meant to include but not be limited to what are commonly referred to as satellite earth stations, television reception-only (TVRO's), and satellite microwave antennas.

School, Elementary, Junior High, High School, College, or Junior College: Public and other non-profit institutions conducting regular academic instruction at kindergarten, elementary, secondary, and tertiary levels. Such institutions shall offer general academic instructions equivalent to the standards prescribed by the State Board of Education or the State Board of Regents.

School, Nursery: A school or the use of a site or a portion of a site for an organized program devoted to the education or day care of five (5) or more children of elementary school age or younger, other than those residents on the site. This includes day care centers.

School, Private or Parochial: An institution conducting regular academic instruction at kindergarten, elementary, secondary, and tertiary levels operated by a nongovernmental organization.

School, Trade: Schools offering instruction in the technical, commercial or trade skills, such as real estate schools, business colleges, electronic schools, automotive and aircraft technician schools and similar commercial establishments operated by a nongovernmental organization.

Service Station: An occupancy engaged in the retail sales of gasoline, oil, tires, batteries, and new accessories and which provides for the servicing of motor vehicles and operations incidental thereto, including: automobile washing, waxing and polishing, tire changing and repairing, but not including recapping. May also include battery service, radiator cleaning, flushing and repair, installation of minor accessories, lubrication of motor vehicles, rental of utility trailers, testing, adjustment and replacement of motor parts and accessories.

Shelter Care: Short term residential care facilities providing lodging on a temporary basis, meals and counseling to individuals and groups such as, but not limited to, the homeless, pregnant teenagers, victims of domestic violence, neglected children, and runaways.

Shopping Center: A group of retail stores or professional offices planned and designed for the site on which it is built, functioning as a unit, with off-street parking, landscaped areas and pedestrian malls or plazas provided on the property as an integral part of the unit.

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Sign: Any device providing identification, advertising or directional information for a business, service, product, person, organization, place, or building. Included in this definition as signs are graphic devices such as logos and attention-attracting items such as banners or logo sculptures.

Sign, Advertising: A sign which includes any copy and/or graphics relating to any business, service, product, person, organization, place, or building in addition to simple identification, excluding directional information.

Sign, Directional: A sign that does not contain either identification or advertising copy, but does contain other helpful information, including assisting in the flow of traffic. See Chapter 6 for an example.

Sign, Directory: A sign listing the names and/or uses, and/or locations of the various tenants or activities within a building, or in a multi-tenant development, but not for the purpose of advertising products, goods, or services.

Sign, Fascia: A sign which is permanently affixed to the horizontal member or surface at the edge of a projecting roof. See chapter 6 for an example.

Sign, Freestanding: A sign which has its own supporting structure independent of the building or business it identifies, or any product or service provided.

Sign, Fuel Price: A sign displaying the price(s) of fuel at a service station.

Sign, Identification: A sign which contains only the name of the business, person, organization, place, service, product, or building at that location.

Sign, Ideological: A sign which expresses, conveys, or advocates a non-commercial message.

Sign, Illuminated: A sign which is lighted, either externally or internally.

Sign, Mansard & Parapet: A sign permanently affixed to a wall or surface not more than 20 degrees from vertical at the upper edge of a building and running parallel with the mansard roof line or parapet upon which the sign is attached. For an example see Chapter 6.

Sign, Menu Board: A sign displaying the bill of fare of a drive-in or drive-through restaurant.

Sign, Off-Premise Directional: A portable sign containing directional information to a destination within the Towns' municipal boundary, which may only be located in specified areas of Town road rights-of-way during specified times.

Sign, Political: A sign which expresses a position; conveys a message concerning, or advocates a position on the candidacy of a person, party, or issue on an upcoming ballot.

Sign, Roof: A sign affixed on, above, or over the roof of a building so that it projects above the roof line. The top of a parapet wall shall be considered the roof line. The highest point of a mansard roof shall be considered the roof line. Where a parapet wall is combined with a mansard roof, the roof line shall be the top of the parapet.

Sign, Sandwich: A portable sign; one which is not permanently affixed to a structure or permanently ground-mounted. For an example, See Chapter 6.

Sign, Wall-Mounted: A sign which is fastened to any vertical portion of a building.

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Sign, Window: Any poster, cut-out letters, painted text or graphics, or other text or visual presentation affixed to, or placed within six (6) feet behind a window pane, and is placed to be read from the exterior of a building.

Stable: A detached accessory structure including, but not limited to, a corral or paddock for the keeping of one or more horses owned by the occupants of the premises and which are not kept for remuneration, hire or sale.

Stable, Commercial: A structure including, but not limited to, a corral or paddock for the keeping of horses for remuneration, hire or sale.

Store: A building where manufactured or ready-made items can be purchased.

Story: That portion of a building included between the surface of any floor and the finished ceiling next above it or the finished undersurface of the roof directly over the particular floor.

Street: A right-of-way, dedicated and accepted by the Town of Fountain Hills, for public uses, which provides the principal vehicular and pedestrian access to adjacent properties.

Street Line: The boundary line between street right-of-way and abutting property.

Street, Public: A right-of-way, dedicated to and accepted by the Town of Fountain Hills, for public uses, which provides the principal vehicular and pedestrian access to adjacent properties.

Structure: Anything constructed or erected which requires a fixed location on the ground, including a building or mobile home, but not including a fence or wall used as a fence.

Structural Alteration: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of the roof or exterior walls.

Subdivision: Improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four (4) or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two (2) or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided. "Subdivision" does not include the following:

- A. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots.
- B. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership.
- C. The leasing of apartments, offices, stores or similar space within a building or trailer park, nor to mineral, oil or gas leases.

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Supervisory Care Home: A residential care institution which provides only supervisory care services to no more than four (4) ambulatory persons unrelated to the owner of such a home.

Swale: A low flat depression to drain off excess water.

Swimming Pool: Any permanent structure, containing or intended to contain water eighteen (18) inches or more in depth and/or eight (8) feet or more in width at any point.

Temporary Vehicle Storage Facility: Any land or building used for the temporary storage of abandoned, wrecked or legally-impounded automobiles, boats, or other vehicles regardless of running condition. Such a facility is not a facility where dismantling of any vehicle, the storage of any vehicle parts, the retailing or wholesaling of any vehicle or vehicle parts may take place.

Town Council: The Mayor and Common Council of the Town of Fountain Hills.

Transmission Line, Overhead: An electrical power line which is capable of conveying sixty-nine (69) thousand or more volts of power.

Travel Trailer: A portable structure without motive power, with wheels built on a chassis, designed as a temporary dwelling for travel, recreation, and vacation purposes, having a body width not exceeding eight (8) feet and a body length not exceeding thirty-two (32) feet.

Treatment Center: Facilities providing lodging and meals and, primarily, treatment, training or education as a part of an alcoholism or drug addiction program.

Use: The purpose for which a site or structure is arranged, designed, intended, constructed, moved, erected, altered or enlarged or for which either a site or structure is or may be occupied and maintained.

Use, Accessory: A use which is incidental, related, appropriate, and clearly subordinate to the lot or building, and which does not alter the principal use of the lot or building.

Use, Permitted: A use which is listed as a "permitted use" in any given zone district. Such use shall be allowed to be established within that zone district, subject to the specific requirements of this ordinance.

Use, Prohibited: Any use not specifically permitted or permitted by a special use permit is prohibited.

Use, Special: A use which is listed as a "special use" in any given zoning district. Such use shall require a "special use permit" in order to be established within that zoning district, and shall be subject to all conditions and requirements imposed by the Town Council in connection with the special use permit.

Use, Temporary: A use which is listed as a "temporary use" in any given zoning district. Such use shall require a "temporary use permit" in order to be established within that zoning district and shall be subject to all conditions and requirements imposed by the staff or Town Council, whichever issues the permit.

Usable Open Space: Space which can be enjoyed by people. This could include landscaped plazas, grass and trees, fountains, sitting areas, etc., and is meant to provide an open garden atmosphere. Meaningful open space does not include parking areas, vacant or undeveloped lots or any other space which does not contribute to the quality of the environment.

Utility Services: Service to the public of water, sewer, gas, electricity, telephone and cable television. The foregoing shall be deemed to include attendant facilities and appurtenances to the above uses, including,

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without limitation, stations along pipelines, and substations along electric transmission lines; but not including public utility treatment and generating plants or offices.

Variance: See Chapter 2, Section 2.06B herein.

Wall: Any device forming a physical barrier which is so constructed that fifty (50) percent or more of the vertical surface is closed preventing the passage of light, air and vision through said surface.

Warehouse: A building or buildings used for the storage of goods.

Wholesale: The sale of goods or materials for the purposes of resale.

Yard: A minimum required open area adjacent to a lot line that shall be free from any structure except as specified in the Town of Fountain Hills Zoning Ordinance. .

Yard, Front: A yard, the depth of which is the minimum required horizontal distance between the front line and the front yard setback line , which yard extends across the full width of the lot. For a corner lot, the front yard is the narrower of the two street side frontages.

Yard, Rear: A yard, the depth of which is the minimum required horizontal distance between the rear lot line and rear-yard setback line, which yard extends across the full width of the lot, not including any portion of a required street side yard.

Yard, Required: The minimum open space as specified by the regulations of this Ordinance for front, rear, side, and street side, as distinguished from any yard area in excess of the minimum required. See "Building Area".

Yard, Side: A yard, the width of which is the minimum required horizontal distance between the side lot and the side-yard setback line , not including any portion of the required front yard or required rear yard.

Yard, Street Side: Any yard, the depth of which is the minimum required horizontal distance between the street side lot line and the street side-yard setback line, not including any portion of the required front yard.

Zone: A district classification established by this ordinance which limits or permits various and specific uses.

Zoning Administrator: The official responsible for enforcement of the zoning ordinance.

Zoning Clearance: The approval by the Community Development Director of a plan that is in conformance with *The Zoning Ordinance for the Town of Fountain Hills*.

Zoning District: A zone area in which the same zoning regulations apply throughout the district.